REPRINTED COPY

Supreme Court, U.S.
FILED
DEC 14 2016
OFFICE OF THE CLERK

No. 16-348

In the Supreme Court of the United States

MIDLAND FUNDING, LLC, PETITIONER

v.

ALEIDA JOHNSON

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

REPRINTED BRIEF FOR THE RESPONDENT

EARL P. UNDERWOOD, JR.
KENNETH J. RIEMER
UNDERWOOD & RIEMER, P.C.
21 S Section Street
Fairhope, AL 36532

RADHA A. PATHAK
WHITTIER LAW SCHOOL
3333 Harbor Blvd.
Costa Mesa, CA 90026

MATTHEW A. SELIGMAN
88 Mount Vernon St., Ste. 50
Boston, MA 02108

PETER K. STRIS
BRENDAN S. MAHER
DANIEL L. GEYSER
Counsel of Record
DANA BERKOWITZ
DOUGLAS D. GEYSER
STRIS & MAHER LLP
725 S. Figueroa St., Ste. 1830
Los Angeles, CA 90017
(213) 995-6811
daniel.geyser@strismaher.com

PRC - (202) 789-0096 - WASHINGTON, D.C. 20002

TABLE OF CONTENTS

Page

Introduction 1

Statement 3

A. Statutory background 3

B. Factual background 9

C. Procedural history 15

Summary of argument 19

Argument 21

I. The FDCPA prohibits knowingly filing a proof of claim on time-barred debt in a Chapter 13 bankruptcy 21

A. Midland violates the FDCPA by falsely representing that its time-barred claims are valid and enforceable when it knows exactly the opposite is true 22

B. Midland violates the FDCPA by exploiting the claims-allowance process to collect when the system *malfunctions*, not when it operates as Congress intended 29

C. The same baseless filings that would violate the FDCPA in state court also violate the FDCPA in bankruptcy 32

D. Midland's conduct created a direct and immediate risk of concrete harm, and Johnson plainly has Article III standing to challenge Midland's conduct 37

II. Midland is engaged in a clear abuse of the bankruptcy process 38

Page

Table of contents—continued:

A. As matter of law and logic, there is no "right to payment" for unenforceable claims 38

B. A purported "right" to file time-barred claims is directly at odds with the Code's structure and purpose 45

III. Midland cannot meet its heavy burden of establishing that the Bankruptcy Code repeals these FDCPA claims 49

Conclusion 52

TABLE OF AUTHORITIES

Cases:

Andrews, In re, 394 B.R. 384 (Bankr. E.D.N.C. 2008) 14

Avalos v. *LVNV Funding, LLC (In re Avalos)*, 531 B.R. 748 (Bankr. N.D. Ill. 2015) 30

Birtchman v. *LVNV Funding, LLC*, No. 1:14-CV-00713, 2015 WL 1825970 (S.D. Ind. Apr. 22, 2015) 34

Brubaker v. *City of Richmond*, 943 F.2d 1363 (4th Cir. 1991) 48

Brunson, In re, 486 B.R. 759 (Bankr. N.D. Tex. 2013) 16

Buchanan v. *Northland Group, Inc.*, 776 F.3d 393 (6th Cir. 2015) 24, 42

Butner v. *United States*, 440 U.S. 48 (1979) 33

Charter Co., In re, 876 F.2d 866 (11th Cir. 1989) 42

Cohen v. *de la Cruz*, 523 U.S. 213 (1998) 39

Conn. Nat'l Bank v. *Germain*, 503 U.S. 249 (1992) 50

Crawford v. *LVNV Funding, LLC*, 758 F.3d 1254 (11th Cir. 2014) ..... *passim*

Dep't of Trans. v. *Pub. Citizen*, 541 U.S. 752 (2004) 50

Page

Cases—continued:

Dubois, In re, 834 F.3d 522 (4th Cir. 2016) 18
Empiregas, Inc. v. *Feely*, 524 So.2d 626 (Ala. 1988) 49
Epstein v. *Official Comm. of Unsecured Creditors of Estate of Piper Aircraft Corp.*, 58 F.3d 1573 (11th Cir. 1995) 43
Evory v. *RJM Acquisitions Funding L.L.C.*, 505 F.3d 769 (7th Cir. 2007) 27
Excello Press, Inc., In re, 967 F.2d 1109 (7th Cir. 1992) 48
FCC v. *NextWave Pers. Communs. Inc.*, 537 U.S. 293 (2003) 39
FDIC v. *Calhoun*, 34 F.3d 1291 (5th Cir. 1994) 48
Feggins v. *LVNV Funding LLC (In re Feggins)*, No. 13-11319-WRS, 2015 Bankr. LEXIS 2822 (Bankr. M.D. Ala. Aug. 24, 2015) ..... *passim*
Feggins v. *LVNV Funding LLC*, No. 13-11319-WRS, 2015 WL 7424339 (Bankr. M.D. Ala. Nov. 20, 2015) 36
Fogerty v. *Fantasy, Inc.*, 510 U.S. 517 (1994) 49
Freeman, In re, 540 B.R. 129 (Bankr. E.D. Pa. 2015) 36, 38
Freyermuth v. *Credit Bureau Servs., Inc.*, 248 F.3d 767 (8th Cir. 2001) 32
Gammon v. *GC Serve. Ltd. P'ship*, 27 F.3d 1254 (7th Cir. 1994) 24
Gardner v. *New Jersey*, 329 U.S. 565 (1947) 23, 46
Goins v. *JBC & Assocs., P.C.*, 352 F. Supp. 2d 262 (D. Conn. 2005) 49
Grogan v. *Garner*, 498 U.S. 279 (1991) 37
Harris v. *Viegelahn*, 135 S. Ct. 1829 (2015) 36, 44
Huertas v. *Galaxy Asset Mgmt.*, 641 F.3d 28 (3d Cir. 2011) 39, 40, 42
J.E.M. Ag Supply, Inc. v. *Pioneer Hi-Bred Int'l, Inc.*, 534 U.S. 124 (2001) 20, 49, 50
Jenkins v. *Genesis Fin. Solutions, LLC (In re Jenkins)*, 456 B.R. 236 (Bankr. E.D.N.C. 2011) 14, 35

Page

Cases—continued:

Jerman v. *Carlisle, McNellie, Rini, Kramer & Ulrich LPA*, 559 U.S. 573 (2010) 4
Johnson v. *Home State Bank*, 501 U.S. 78 (1991) 39
Kokoszka v. *Belford*, 417 U.S. 642 (1974) 51
LaGrone v. *LVNV Funding LLC (In re LaGrone)*, 525 B.R. 419 (Bankr. N.D. Ill. 2015) 35
Leeds Bldg. Prods. v. *Moore-Handley, Inc. (In re Leeds Bldg. Prods.)*, 181 B.R. 1006 (Bankr. N.D. Ga. 1995) 48
Liberty Nat'l Life Ins. Co., Ex parte, 825 So.2d 758 (Ala. 2007) 42
McMahon v. *LVNV Funding, LLC*, 744 F.3d 1010 (7th Cir. 2014) ..... *passim*
Morton v. *Mancari*, 417 U.S. 535 (1974) 20, 50
Owens v. *LVNV Funding, LLC*, 832 F.3d 726 (7th Cir. 2016) 6, 10, 18
Pa. Dep't of Pub. Welfare v. *Davenport*, 495 U.S. 552 (1990) 39, 40, 44
Phillips v. *Asset Acceptance, LLC*, 736 F.3d 1076 (7th Cir. 2013) 19, 32, 33, 40
POM Wonderful LLC v. *Coca-Cola Co.*, 134 S. Ct. 2228 (2014) 50
Randolph v. *IMBS, Inc.*, 368 F.3d 726 (7th Cir. 2004) 50, 51
Robinson v. *eCast Settlement Corp.*, No. 14-CV-8277, 2015 WL 494626 (N.D. Ill. Feb. 3, 2015) 24
S. Atl. Fin. Corp., In re, 767 F.2d 814 (11th Cir. 1985) 16
Sekema, In re, 523 B.R. 651 (Bankr. N.D. Ind. 2015) 32, 45, 48
Sheriff v. *Gillie*, 136 S. Ct. 1594 (2016) 26
Smith v. *Asset Acceptance, LLC*, 510 B.R. 225 (S.D. Ind. 2013) 49
Spokeo, Inc. v. *Robins*, 136 S. Ct. 1540 (2016) 37
Steinle v. *Warren*, 765 F.2d 95 (7th Cir. 1985) 48

Page

Cases—continued:

Suesz v. *Med-1 Solutions, LLC*, 757 F.3d 636 (7th Cir. 2014) 35
Taylor, In re, 363 B.R. 303 (Bankr. M.D. Fla. 2007) 16
Tolentino v. *Friedman*, 46 F.3d 645 (7th Cir. 1995) 28
Travelers Cas. & Surety Co. of Am. v. *Pac. Gas & Elec. Co.*, 549 U.S. 443 (2007) 41
Wallace v. *Wash. Mut. Bank, F.A.*, 683 F.3d 323 (6th Cir. 2012) 27
White v. *GM Corp.*, 908 F.2d 675 (10th Cir. 1990) 48
Young v. *Young (In re Young)*, 789 F.3d 872 (8th Cir. 2015) 27, 46

Statutes and rules:

Bankruptcy Code, 11 U.S.C. 101-1532 ..... *passim*
11 U.S.C. 101(5)(A) 5, 38, 39
11 U.S.C. 327(a) 7
11 U.S.C. 330(a)(1) 7
11 U.S.C. 362(a)(3) 44
11 U.S.C. 362(a)(6) 44
11 U.S.C. 501(a) 5, 41
11 U.S.C. 502(a) ..... *passim*
11 U.S.C. 502(b)(1) 8, 15, 41, 46
11 U.S.C. 503(b)(2) 7
11 U.S.C. 507(a)(2) 7
11 U.S.C. 523(a) 9
11 U.S.C. 525 47
11 U.S.C. 541(a)(1) 5
11 U.S.C. 558 ..... 8, 46
11 U.S.C. 704(a)(5) 7, 45, 46
11 U.S.C. 726(a)(1) 7, 8
11 U.S.C. 726(a)(2) 7, 8
11 U.S.C. 726(a)6) 9
11 U.S.C. 1302(b)(1) 7, 45, 46
11 U.S.C. 1322(a)(2) 7
11 U.S.C. 1325(b) 8

Page

Statutes and rules—continued:

11 U.S.C. 1325(b)(1)(A) 9
11 U.S.C. 1328(a) 8
11 U.S.C. 1328(a)(2) 9
11 U.S.C. 1328(b) 8
Fair Debt Collection Practices Act,
15 U.S.C. 1692-1692p ..... *passim*
15 U.S.C. 1692(a) 35
15 U.S.C. 1692(e) 3, 37
15 U.S.C. 1692a(3) 4
15 U.S.C. 1692a(5) 4
15 U.S.C. 1692a(6) 4
15 U.S.C. 1692c(c) 47
15 U.S.C. 1692e ..... *passim*
15 U.S.C. 1692e(10) 5, 23, 27
15 U.S.C. 1692e(2) 5, 23, 27
15 U.S.C. 1692f ..... *passim*
15 U.S.C. 1692f(1) 5
15 U.S.C. 1692k(a)(1) 5
15 U.S.C. 1692k(a)(2)(A) 5
15 U.S.C. 1692k(a)(2)(B) 5
15 U.S.C. 1692k(a)(3) 5
15 U.S.C. 1692k(c) 5
Fed. R. Bankr. P. 1001 45
Fed. R. Bankr. P. 3001 ..... 5, 23, 46
Fed. R. Bankr. P. 3001(a) 6
Fed. R. Bankr. P. 3001(b) 6
Fed. R. Bankr. P. 3001(c) 25
Fed. R. Bankr. P. 3001(c)(3)(A) 6
Fed. R. Bankr. P. 3001(c)(3)(B) 6
Fed. R. Bankr. P. 3001(f) 8, 13, 23, 46
Fed. R. Bankr. P. 3001
advisory committee's notes (2012) 25
Fed. R. Bankr. P. 3002(c) 6
Fed. R. Bankr. P. 3007(a) 6
Fed. R. Bankr. P. 9011 ..... 25, 26
Fed. R. Bankr. P. 9014 6

Page

Statutes and rules—continued:
Fed. R. Bankr. P. 9022(a) 6
Ala. Code § 6-2-30(a) 40

Miscellaneous:
Agenda Book for the Meeting of the Advisory Committee on Bankruptcy Rules (Mar. 26-27, 2009) <tinyurl.com/2009agenda> 25
Am. InfoSource, *AIS Insight 2015 Year in Review* 14
Complaint, *In re Freeman-Clay* v. *Resurgent Capital Servs., L.P.*, No. 14-41871-DRD13 (Bankr. W.D. Mo. Aug. 22, 2016) 15
Consent Order, *In re Encore Capital Group, Inc.*, No. 2015-CFPB-0022 (Sept. 9, 2015) 13, 14
Encore Capital Group, Inc., *2016 Form 10-K* 11, 15
Fed. Trade Comm'n, *Collecting Consumer Debts: The Challenges of Change* (Federal Trade Commission 2010) 9
Fed. Trade Comm'n, *The Structures and Practices of the Debt Buying Industry* (2013) 10, 11, 12, 15
H.R. Rep. No. 595, 95th Cong., 1st Sess. (1977) 43
Jessica Silver-Greenberg, *Boom in Debt Buying Fuels Another Boom—in Lawsuits*, Wall Street Journal (Nov. 28, 2010) 12, 13
Judith Fox, *Do We Have a Debt Collection Crisis? Some Cautionary Tales of Debt Collection in Indiana*, 24 Loy. Consumer L. Rev. 355 (2012) 12
Lisa Stifler & Leslie Parrish, *The State of Lending in America & its Impact on U.S. Households: Debt Collection & Debt Buying* (Center for Responsible Lending 2014) 9, 10, 11, 12
Nat'l Consumer Law Ctr., *Comment to the Federal Trade Commission Regarding the Fair Debt Collection Practices Act* (Aug. 1, 2009) 12

Page

Miscellaneous—continued:

Peter A. Holland, *The One Hundred Billion Dollar Problem in Small Claims Court: Robo-Signing and Lack of Proof in Debt Buyer Cases*, 6 J. Bus. & Tech. L. 259 (2011) 12, 13

S. Rep. No. 382, 95th Cong., 1st Sess. (1977) 4

U.S. Bankr. Court for the Cent. Dist. Cal., *Annual Report* (2015) 6

In the Supreme Court of the United States

No. 16-348

MIDLAND FUNDING, LLC, PETITIONER

v.

ALEIDA JOHNSON

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

BRIEF FOR THE RESPONDENT

INTRODUCTION

The Fair Debt Collection Practices Act (FDCPA) regulates a narrow class of actors who face adverse incentives: professional consumer-debt collectors. To protect innocent consumers, the FDCPA prohibits "deceptive" or "unfair" practices in connection with the collection of a debt. For example, lower courts have widely held that filing suit to recover on a time-barred debt violates the Act. The reason is obvious: such lawsuits seek to unfairly frighten or deceive consumers into paying a stale debt where they have no legal obligation to do so.

Petitioner in this case is a professional consumer debt collector. Its tactics here are more sophisticated, but equally cynical. Petitioner uses the bankruptcy claim process—where claims are cheap to file and presumptively valid—as a means to collect on knowingly time-

barred debts, fully aware that the relevant stakeholders (debtors, their counsel, and bankruptcy trustees) will often fail to object. Indeed, that is the only reason that petitioner's business makes money: because it is *certain* that some time-barred debts will slip through. Petitioner effectively admits that if the bankruptcy system functioned as Congress intended, these claims would be rejected 100 percent of the time.

Petitioner's brief is perhaps most telling for what it does not say. It does not contest that petitioner and its peers file claims in the hope of collecting unenforceable debts. It does not argue that they have any good-faith basis for these filings or any legitimate response once anyone objects. In fact, petitioner does not discuss the troubling industry practice at issue here at all.

Instead, petitioner argues that the Bankruptcy Code (and its underlying policies) somehow immunizes its behavior. Petitioner's arguments, however, misapprehend the law and are predicated on clear misrepresentations about the realities of the consumer-bankruptcy system.

Petitioner wrongly suggests, for example, that consumers are not hurt by its illegitimate claims; only other creditors are. Not so. For example: most Chapter 13 plans fail, leaving the debtor obligated to pay her debts in full. Monies wasted on time-barred debts wrongly included in the failed Chapter 13 plan leaves the debtor with a higher outstanding obligation to her real, surviving creditors than if her resources had not been siphoned away by illegitimate debt. And money paid on stale debts reduces the amount the debtor has to satisfy legitimate non-dischargeable debts, like child support or student loans. Of course, illegitimate claims also harm everyone by increasing the costs of our bankruptcy system.

Nor, as petitioner remarkably suggests, does presentment of a time-barred debt somehow affirmatively *benefit* the debtor by promoting a "fresh start." Those debts are already a practical nullity, and in any event scheduling these claims would not have the benefit that petitioner alleges.

Finally, the trustee's presence does not exculpate petitioner or legitimize its conduct. Trustees neither have infinite time nor offer it free of charge, which means—as petitioner well knows—that the estate and its trustee face a limited economic incentive to carefully scrutinize smaller claims. It is deceptive and unfair for petitioner to exploit *en masse* that systemic reality in an effort to collect on expired debts—which is exactly why the U.S. Trustee has sued Resurgent Capital Services, L.P.—the defendant in the companion case before the Eleventh Circuit below and an *amicus* supporting petitioner in this Court.

STATEMENT

This case presents fundamental questions concerning the interaction of the FDCPA and the Bankruptcy Code. As such, respondent begins with a brief examination of those two statutory regimes followed by a brief discussion of the relevant factual and procedural history of this case.

A. Statutory Background

1. Congress enacted the FDCPA in 1977 to "eliminate abusive debt collection practices by debt collectors, to insure that those debt collectors who refrain from using abusive debt collection practices are not competitively disadvantaged, and to promote consistent State action to protect consumers against debt collection abuses." 15 U.S.C. 1692(e). It recognized both the egregious conduct of "a small segment" of independent debt collectors and

the blamelessness of their targets—"the number of persons who willfully refuse to pay *just* debts is miniscule." S. Rep. No. 95-382, at 3 (1977) (emphasis added).

The Act accordingly regulates a narrow class of actors: professional consumer debt collectors.[1] Congress recognized that unlike original creditors, these third-party debt collectors would not feel "restrained by the desire to protect their good will" or "[]concerned with the consumer's opinion of them." S. Rep. No. 95-382, at 2. They have the "incentive to collect by any means." *Ibid.*

In regulating that narrow class of actors, the FDCPA imposes broad prohibitions. See *Jerman* v. *Carlisle, McNellie, Rini, Kramer & Ulrich LPA*, 559 U.S. 573, 587 (2010). It provides that "[a] debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt." 15 U.S.C. 1692e. It separately forbids the use of "unfair or unconscionable means to collect or attempt to collect any debt." 15 U.S.C. 1692f. In both sections, the Act contains non-exhaustive lists of abusive collection practices. See S. Rep. No. 95-382, at 4 ("This will enable courts, where appropriate, to proscribe other improper conduct which is not specifically addressed."). And the enumerated practices themselves reflect the expanse of prohibited

---

[1] The Act defines "debt collector" as any person whose business has the "principal purpose" of debt collection or who "regularly" collects debts "due another." 15 U.S.C. 1692a(6); see, *e.g.*, S. Rep. No. 95-382, at 3 ("The primary persons intended to be covered are independent debt collectors."). The Act defines "debt" to mean a primarily "personal, family or household" obligation of a "consumer," and in turn defines "consumer" as a "natural person." 15 U.S.C. 1692a(3), (5); see, *e.g.*, S. Rep. No. 95-382, at 3 ("This bill applies only to debts contracted by consumers for personal, family, or household purposes; it has no application to the collection of commercial accounts.").

conduct, outlawing not only aggressive, intimidating tactics but also more subtle efforts to deceive the debtor.[2]

Congress included a private right of action and statutory damages to incentivize private policing.[3] However, Congress sharply limited the damages recoverable in class actions to prevent over-enforcement.[4] Importantly, Congress also provided an affirmative defense to debt collectors who implement "procedures reasonably adapted to avoid" violations of the Act. 15 U.S.C. 1692k(c).

2. Once a debtor files for bankruptcy, a bankruptcy estate is created that consists of "all legal or equitable interests of the debtor in property as of the commencement of the case." 11 U.S.C. 541(a)(1). Creditors who wish to recover from the estate "may file a proof of claim," 11 U.S.C. 501(a), which is "a written statement setting forth a creditor's claim." Fed. R. Bankr. P. 3001. The Code defines a "claim" as a "right to payment, whether or not such right is * * * fixed, contingent, matured, unmatured, disputed, [or] undisputed." 11 U.S.C. 101(5)(A).

---

[2] For example, those efforts include falsely representing the "character, amount, or legal status of the debt"; using "deceptive means to collect or attempt to collect any debt"; and collecting an amount that is not "expressly authorized by the agreement creating the debt or permitted by law." 15 U.S.C. 1692e(2), (10), 1692f(1).

[3] In an individual action, a consumer may recover actual damages plus statutory damages up to one thousand dollars. 15 U.S.C. 1692k(a)(1), (2)(A). A successful plaintiff may recover costs and attorneys' fees. 15 U.S.C. 1692k(a)(3).

[4] In a class action, statutory damages for the class members other than the named plaintiffs may not exceed the lesser of $500,000 or 1% of the debt collector's net worth. 15 U.S.C. 1692k(a)(2)(B). A successful class plaintiff may also recover costs and attorneys' fees. 15 U.S.C. 1692k(a)(3).

Filing a proof of claim is easy and free. Creditors file claims on a simple, standardized 3-page form. See Fed. R. Bankr. P. 3001(a)-(b) & 3002(c). No filing fee or attorney is required.[5] For most consumer credit agreements, creditors need not even attach any underlying documentation when they submit their claim. See Fed. R. Bankr. P. 3001(c)(3)(A). A copy of the agreement—which would include any choice-of-law provision—must be provided only on written request. See *id.* 3001(c)(3)(B).

Unlike filing claims, *objecting to* claims is time-consuming and costly.[6] The objector must make a written objection, notice a hearing, and serve multiple parties. Fed. R. Bankr. P. 3007(a); see *id.* 9014. The objector then must attend the hearing and overcome the claim's prima facie validity. Finally, a formal order disallowing the claim must be prepared and served. *Id.* 9022(a).

Debtors regularly fail to object to patently time-barred claims. This is true for various reasons. For example, some debtors are *pro se*.[7] And many others are represented by counsel who are paid a flat fee for services that often do not include examining proofs of claim or filing objections.

---

[5] PACER even provides "large claims filers" the ability to file claims electronically in "batches." See *Description of the Process for Electronic Filing of Bankruptcy Claims Information in CM/ECF by Creditors* (April 16, 2013).

[6] A proof of claim is subject to objection by any "party in interest" (the debtor, another creditor, or the bankruptcy trustee). 11 U.S.C. 502(a).

[7] See, *e.g.*, *Owens* v. *LVNV Funding, LLC*, 832 F.3d 726, 740 (7th Cir. 2016) (Wood, J., dissenting) (noting that 9% of bankruptcy filings in the Northern District of Illinois were *pro se*); U.S. Bankr. Court for the Cent. Dist. Cal., *Annual Report* 17 (2015) (noting that 37.5% of Chapter 13 petitions were *pro se*).

Trustees in consumer bankruptcy cases also regularly fail to object to patently time-barred claims. It is important to understand why: Bankruptcy trustees are statutorily obligated to "examine proofs of claims," but they must object to improper claims only "if a purpose would be served." 11 U.S.C. 704(a)(5); 11 U.S.C. 1302(b)(1) (imposing the same duty on Chapter 13 trustees). Even when the facts included on a proof of claim would indicate that the underlying debt is patently time-barred, it is often economically imprudent for a trustee to spend time examining and objecting to such a claim. Objecting to improper, low dollar-value claims is often counterproductive because the trustee's expenses get passed on to other parties.[8] These expenses are paid before most unsecured claims in a Chapter 7 bankruptcy (11 U.S.C. 726(a)(1)-(2)), and are entitled to "full payment" by the debtor in a Chapter 13 case (11 U.S.C. 1322(a)(2). An objection thus shrinks the pool of resources available to satisfy meritorious debts or, in a Chapter 13 case, may make plan confirmation less likely if the cost exceeds the savings from disallowing the claim.

The failure of debtors and trustees to object to patently time-barred debt results in the allowance of claims that are, in fact, unenforceable. That is true because the filing of a proof of claim is "prima facie" evidence of its

---

[8] The Code allows the trustee's counsel compensation and reimbursement for her services and expenses. See 11 U.S.C. 327(a) (providing that the trustee may retain counsel), 330(a)(1) (providing for "reasonable compensation for actual, necessary services" and "reimbursement for actual, necessary expenses"); 503(b)(2) (permitting an administrative expense for "compensation and reimbursement" under Section 330(a)), 507(a)(2) (establishing priority for administrative expenses).

validity. Fed. R. Bankr. P. 3001(f). As such, any claim is automatically "allowed" unless a party in interest objects and satisfies her burden to show that "such claim is unenforceable against the debtor * * * under any agreement or applicable law." 11 U.S.C. 502(a), (b)(1). And Congress specifically included "statutes of limitation" as one means of proving unenforceability. 11 U.S.C. 558.

Allowing improper claims in bankruptcy proceedings has an obvious, significant, and negative economic impact on innocent creditors. The precise mechanism of that effect depends on whether Chapter 7 or Chapter 13 governs. A Chapter 7 bankruptcy entails the liquidation of the debtor's (non-exempt) property, where the proceeds go first to priority creditors with the surplus distributed to allowed, unsecured claims on a pro rata basis. See 11 U.S.C. 726(a)(1)-(2). Every allowed claim thus decreases the amount of funds available to pay down other claims. A Chapter 13 bankruptcy provides a debtor who has regular income a discharge of debts by using her income to satisfy claims; she must either pay all unsecured claims in full or use her disposable income to make pro rata payments to those claimholders over several years. See 11 U.S.C. 1325(b). In either situation, every allowed claim decreases the amount of funds available to satisfy other claims.

Contrary to the factual assertions of petitioners, allowing improper claims in bankruptcy also has significant and negative consequences for innocent debtors. Two such situations are notable:

First, most Chapter 13 debtors (like respondent) default under their payment plans. Except under narrow circumstances, these debtors do not obtain a discharge of *any* debts. See 11 U.S.C. 1328(a)-(b). The pro rata distribution of payments to creditors thus matters deeply—an allowed illegitimate claim siphons a dollar from a legiti-

mate claim. When the plan fails, the debtor is stuck with larger legitimate debts than had the (illegitimate) claim been properly disallowed.

Second, some important debts (like student loans and domestic support obligations) are generally not dischargeable in bankruptcy (either Chapter 7 or Chapter 13). See 11 U.S.C. 523(a), 1328(a)(2). Again, every dollar allocated to an improperly allowed claim (like a time-barred obligation) cannot pay down a legitimate, nondischargeable debt. Accordingly, regardless of the plan's success, allowing an indisputably time-barred claim leaves the debtor with larger debts than she should have.[9]

B. Factual Background

1. Debt buyers like petitioner represent "[t]he most significant change in the debt collection business in recent years." Fed. Trade Comm'n, *Collecting Consumer Debts: The Challenges of Change* 13 (Federal Trade Commission 2010) (FTC 2010 Report).[10] Although hundreds of entities operate in this area, the industry remains substantially concentrated, with just nine firms—including petitioner's parent company Encore Capital Group ("Encore")—responsible for over 76% of all debt purchases in 2008. Fed. Trade Comm'n, *The Structures*

---

[9] Further, in limited circumstances in both Chapter 7 and Chapter 13 bankruptcies, surplus may remain for the debtor. See 11 U.S.C. 726(a)6); 11 U.S.C. 1325(b)(1)(A). In those scenarios, improperly allowed claims reduce that surplus.

[10] Industry revenues have exploded: Between 2003 and 2012, petitioner's parent company realized a 373% increase, while another major player saw nearly 600% growth. Lisa Stifler & Leslie Parrish, *The State of Lending in America & its Impact on U.S. Households: Debt Collection & Debt Buying* 6 (Center for Responsible Lending 2014).

and Practices of the Debt Buying Industry 7, 13 (2013) (FTC 2013 Report).[11]

Debt buyers purchase charged-off debt from creditors "for pennies-on-the-dollar." Stifler & Parish at 2. Credit-card debt is most common,[12] but professional buyers also acquire student loans, medical debt, utility and phone bills, tax liens, car loans, and mortgage and auto deficiencies. *Id.* at 3. Debts "are typically bundled into portfolios" to be sold. FTC 2013 Report at 17.

2. Mass consumer debt buyers like Midland and Resurgent price bundles of consumer debt based in part on their age and timeliness. *See* FTC 2013 Report at 21.[13] As a debt ages, its value drops precipitously: Whereas a debt less than 3 years old generally costs 7.9 cents per dollar of debt, a 3 to 6 year-old debt costs only 3.1 cents and a 6 to 15 year old debt 2.2 cents; debts older than 15 years cost "effectively nothing." *Id.* at 23-24.[14] As their

---

[11] These nine firms include Sherman Financial Group, LLC, which owns Resurgent Capital Services, L.P., ("Resurgent") a defendant in this case before the Eleventh Circuit and an *amicus curiae* before this Court, and LVNV Funding, LLC, a defendant in the Seventh Circuit decision presenting the identical issues raised here. See *Owens* v. *LVNV Funding, LLC*, 832 F.3d 726 (7th Cir. 2016).

[12] Federal regulations require banks to "charge off" credit-card debts after a certain amount of time. See FTC 2013 Report at 13 & n.58.

[13] Debt buyers examine a variety of factors including "the average balance per debt in the portfolio, the average number of months since the creditor charged off the debt, the average number of months since the debtor made the last payment, the states in which the debtors reside, the distribution of balances on the debts, the prevalence of time-barred debts, and the type of accounts being sold." FTC 2013 Report at 21.

[14] "Debt buyers presumably pay less for older debts because their expected return from collecting on those debts is lower, likely reflecting the fact that the consumers may be less willing or able to

pennies-on-the-dollar prices reflect, these debts are extremely difficult to collect.[15]

The ability to accurately price these debts based on age and timeliness is critical to a debt buyer's success.[16] For example, Encore touts its "information advantage" and proprietary valuation models as two keys to its competitive advantage. Encore 10-K 3. To that end, Encore claims to "obtain detailed information regarding the portfolio's accounts," and it "continually monitor[s] applicable changes to laws governing statutes of limitations." *Id.* at 5, 7. Encore is not unique—the FTC concluded "that debt buyers usually are likely to know or be able to determine whether the debts on which they are collecting are beyond the statute of limitations." FTC 2013 Report at 49; see also *id.* at 49 & n.204.

3. Over the years, mass consumer debt buyers like Midland and Resurgent have used a variety of aggressive tactics, including to recover debt that *they know* is time-barred.[17] Courts and regulators have thwarted these different efforts time and again.

---

pay the debt or the consumers may be more difficult for debt buyers to locate." *Id.* at 24. Moreover, "[m]ost states' statutes of limitations are between three and six years, and no state's statute of limitations is longer than fifteen years." *Id.* at 42.

[15] Encore, for example, "generate[s] payments from less than one percent of our accounts every month." *Id.* at 2.

[16] The low barriers to entry in the industry pressure even the big nine firms to adapt. See, *e.g.*, Encore Capital Group, Inc., 2016 Form 10-K 16 ["Encore 10-K"].

[17] In fact, the rise of the debt-buying industry has corresponded with "a significant rise in" consumer complaints about collection practices. FTC 2013 Report at 1. In 2013 alone, for example, the FTC received over 200,000 such complaints. Stifler & Parish at 2.

For example, debt buyers have increasingly used litigation as a debt collection strategy in recent years. See, *e.g.*, Jessica Silver-Greenberg, *Boom in Debt Buying Fuels Another Boom—in Lawsuits*, Wall Street Journal (Nov. 28, 2010) ("The big explosions in lawsuit is coming not from lenders but from firms who buy debt.").[18] Encore filed 245,000 suits in one year, and petitioner alone filed 110 lawsuits on one day in a single state court (Bronx County Civil Court). *Boom in Debt Buying*, *supra*; see also Fox, *supra*, at 373-374 (petitioner filed 1,875 lawsuits in 3 months in Indiana).

Debt buyers generally "rely on overburdened 'small claims courts,' where the state court formal rules of evidence typically do not apply." Peter A. Holland, *The One Hundred Billion Dollar Problem in Small Claims Court: Robo-Signing and Lack of Proof in Debt Buyer Cases*, 6 J. Bus. & Tech. L. 259, 261 (2011) ("Debt buyers shy away from large-value cases, which would require formal proof that complies with the forum state's rules of evidence.").[19] They often prevail on even meritless claims because debtors default. FTC 2013 Report 45 ("90% or

---

[18] See also Stifler & Parish at 9; see, *e.g.*, FTC 2009 Report at 55 ("The vast number of debt collection suits filed in recent years has posed considerable challenges to the smooth and efficient operation of courts."); CFPB Order at 13 ("Encore has filed hundreds of thousands of lawsuits to collect Consumer Debt.").

[19] See also, *e.g.*, Nat'l Consumer Law Ctr., Comment to the Federal Trade Commission Regarding the Fair Debt Collection Practices Act 3 (Aug. 1, 2009) (explaining that small-claims courts are especially attractive "because of their relaxed procedural formalities, low evidentiary standards, inexpensive filing fees, and negligible pleading requirements"). Sometimes, however, courts' local rules incentivize buyers to sue instead in general-jurisdiction courts. See Judith Fox, *Do We Have a Debt Collection Crisis? Some Cautionary Tales of Debt Collection in Indiana*, 24 Loy. Consumer L. Rev. 355 (2012).

more of consumers sued in these actions do not appear in court to defend"); Holland, *supra*, at 263 (debt buyers have won "billions of dollars in default judgments").[20]

But courts have imposed considerable obstacles to using litigation to collect debt. Lower courts have consistently held that filing suit to collect on a knowingly time-barred debt violates the FDCPA. See, *e.g.*, *Crawford* v. *LVNV Funding, LLC*, 758 F.3d 1254, (11th Cir. 2014) ("Federal circuit and district courts have uniformly held that a debt collector's threatening to sue on a time-barred debt and/or filing a time-barred suit in state court to recover that debt violates §§ 1692e and 1692f.").[21]

Regulators have also intervened. For example, the Consumer Financial Protection Bureau (CFPB) found that "Encore sent thousands of letters containing time-limited 'settlement' offers that failed to disclose that the Debt it was collecting was too old for litigation and that implied a legally enforceable obligation to pay the Debt." Consent Order at 18, *In re Encore Capital Group, Inc.*, No. 2015-CFPB-0022 (Sept. 9, 2015) (CFPB Order).[22]

---

[20] Despite the lack of documentation supporting the debt, buyers have been able to take advantage "of lax—and often unenforced—procedural rules." Holland, *supra*, at 262-263.

[21] Some courts have also imposed filing restraints—one Indianapolis judge limited a law firm used by Encore to filing 500 new debt-collection cases every two weeks. *Boom in Debt Buying*, *supra*.

[22] In 2015 Petitioner and its other Encore affiliates stipulated to a consent order from the CFPB to settle accusations of unfair and predatory debt collection practices. Each month, petitioner and its affiliates received approximately 30,000 written disputes, 10,000 oral disputes, and 100,000 electronic disputes from consumers regarding their collection practices. *Id.* at 10. Based on a host of violations of the FDCPA and other consumer-protection laws—including attempting to collect on time-barred debt—the CFPB ordered restitution of at least $34 million. *Id.* at 45-47. The CFPB also ordered peti-

And another Encore entity made thousands of harassing and abusive phone calls to attempt debt collection. *Ibid.* The CFPB concluded that petitioner and its affiliates violated the FDCPA by "represent[ing], directly or indirectly, expressly or by implication, that [c]onsumers had a legally enforceable obligation to pay" time-barred debt. *Id.* at 28.[23]

4. With some avenues cut off, bankruptcy is the new frontier for mass consumer debt buyers like Midland and Resurgent seeking to knowingly collect time-barred debt.[24] Indeed, courts have noted the flood of knowingly time-barred claims.[25]

---

tioner and its affiliates to cease "[c]ollecting or attempting to collect any [t]ime-[b]arred [d]ebt through any means, including but not limited to telephone calls and written communications, without clearly and prominently disclosing to the [c]onsumer" that the debt was time-barred and could not be enforced. *Id.* at 38-39.

[23] The CFPB also found that, "[i]n numerous instances, Encore has threatened and filed suit on Debt that was past the applicable statutes of limitations." CFPB Order at 17.

[24] In 2015, Encore filed nearly $314 million worth of claims, at an average claim value of $3,391.30, although it is unclear what proportion pertained to time-barred debt. See Am. InfoSource, *AIS Insight 2015 Year in Review* 14.

[25] See, *e.g.*, *Crawford*, 758 F.3d at 1256 ("A deluge has swept through U.S. bankruptcy courts of late. Consumer debt buyers—armed with hundreds of delinquent accounts purchased from creditors—are filing proofs of claim on debts deemed unenforceable under state statutes of limitations."); *In re Jenkins*, 456 B.R. 236, 239 n.2 (Bankr. E.D.N.C. 2011) (describing "[t]he plague of stale claims emanating from debt buyers"); *In re Andrews*, 394 B.R. 384, 387 (Bankr. E.D.N.C. 2008) ("The phenomena of bulk debt purchasing has proliferated and the uncontrolled practice of filing claims with minimal or no review is a new development that presents a challenge for the bankruptcy system.").

Recently, the United States Trustee sued Resurgent for "knowingly and strategically fil[ing] thousands of" claims "for debt that is time-barred and subject to disallowance upon objection as a matter of law pursuant to 11 U.S.C. § 502(b)(1)." Compl. ¶ 35, *In re Freeman-Clay* v. *Resurgent Capital Servs., L.P.*, No. 14-41871-DRD13 (Bankr. W.D. Mo. Aug. 22, 2016).

The U.S. Trustee alleged that Resurgent deliberately refrained from bringing suit on these claims outside bankruptcy because it knew they were stale. See *id.* ¶ 40 ("the only way Resurgent attempts to monetize this stale debt using any legal process is by asserting these otherwise legally unenforceable claims in bankruptcy cases throughout the country"). And like Resurgent, petitioner promises to "not pursue collections through legal means" on any account "past its applicable statute of limitations." Encore 10-K at 7.

C. Procedural History

Petitioner purchased $1,879.71 of consumer debt incurred by respondent. See J.A. 18, 25. The last transaction on the consumer credit account was in May 2003, and the debt was charged off as of January 2004. J.A. 18. Alabama's six-year statute of limitations for the collection of that debt thus lapsed in May of 2009. See Ala. Code § 6-2- 34. In fact, virtually every state's statute of limitations would have expired by this time. See FTC 2013 Report at 42 & nn.175-176.

In 2014, five years after the statute of limitations lapsed and over a decade after the last transaction on the account, respondent filed for personal bankruptcy under Chapter 13 of the Bankruptcy Code. J.A. 25. Even though the statute of limitations for the collection of the debt had long since expired, petitioner filed a claim in the bankruptcy proceeding for the debt it had purchased. See J.A. 12-19. Respondent objected to the claim on the

ground it lacked proper documentation. J.A. 21. Petitioner did not attempt to remedy that defect, and the bankruptcy court disallowed the claim. The court then approved a repayment plan for the allowed claims.[26]

1. Respondent's counsel immediately filed a class action against Midland under the FDCPA, hoping to end a scheme that injures vulnerable debtors with increasing frequency. What Midland derides as a "form complaint" filed "three days after the bankruptcy court disallowed petitioner's claim," Pet. Br. 8, was—in fact—a measured challenge to petitioner's notorious and illegal business model (in direct response to the paradigmatic, frivolous proof of claim filed in respondent's bankruptcy).

In this lawsuit, Respondent alleges that petitioner's attempt to collect a knowingly time-barred debt was "un-

---

[26] Petitioner complains that "the record does not reflect whether there was some reason the limitations defense would not apply." Br. 8 n.1. That is grossly misleading. As petitioner is undoubtedly aware, the record also does not reflect that petitioner made any effort whatsoever to show that the claim was meritorious, such as amending the claim or supplying documentation supporting the claim's legitimacy. See, *e.g.*, *In re Taylor*, 363 B.R. 303, 310 (Bankr. M.D. Fla. 2007) ("Certainly, if a creditor fails to initially attach sufficient documentation, the creditor should be given an opportunity to supplement the initial claim to add the additional supporting documentation. *See In re South Atlantic Financial Corp.*, 767 F.2d 814, 819 (11th Cir.1985) ('[I]n a bankruptcy case, amendment to a claim is freely allowed where the purpose is to cure a defect in the claim as originally filed, to describe the claim with greater particularity or to plead a new theory of recovery on the facts set forth in the original claim.')"). What's more, "the majority view [is] that a proof of claim may not be disallowed where the sole basis of objection is the creditor's failure to attach sufficient documentation." *In re Brunson*, 486 B.R. 759, 773 (Bankr. N.D. Tex. 2013). To be clear: instead of pursuing its claim or contesting the objection, petitioner gave up. The explanation for this surrender is obvious: the claim was frivolous.

fair," "unconscionable," "deceptive," and "misleading" in violation of 15 U.S.C. 1692e and 1692f. The district court rejected petitioner's argument that respondent failed to state a claim under the FDCPA. Pet. App. 19a-20a. The court nonetheless granted petitioner's motion to dismiss on the ground that the Bankruptcy Code precluded the FDCPA suit because the Code granted petitioner a "right" to file the time-barred claim. Pet. App. 20a-37a.

2. The court of appeals reversed. Pet. App. 1a-15a. The court first reaffirmed its prior holding from *Crawford* that "a debt collector violates the FDCPA when it files a proof of claim in a bankruptcy case on a debt that it knows to be time-barred." Pet. App. 2a, 5a. *Crawford* had explained that the reasons for "outlaw[ing] 'stale suits to collect consumer debts'" apply equally "in the bankruptcy context." 758 F.3d at 1259-1260. As in ordinary litigation, time-barred claims take unfair advantage of debtors, deliberately "creat[ing] the misleading impression" that stale debts can be enforced. *Id.* at 1261. And bankruptcy debtors will often give up rather than fight a frivolous claim: "filing objections to time-barred claims consumes energy and resources in a debtor's bankruptcy case, just as filing a limitations defense does in state court." *Ibid.* As the court reasoned, "the limitations period provides a bright line for debt collectors and consumer debtors, signifying a time when the debtor's right to be free of stale claims comes to prevail over a creditor's right to legally enforce the debt." *Id.* at 1260-1261. Accordingly, *Crawford* concluded, "[j]ust as LVNV would have violated the FDCPA by filing a lawsuit on

stale claims in state court, LVNV violated the FDCPA by filing a stale claim in bankruptcy court." *Id.* at 1262.[27]

The court below then addressed the question that *Crawford* held open: whether the Bankruptcy Code "preclude[s] an FDCPA claim in the context of a Chapter 13 bankruptcy when a debt collector files a proof of claim it knows to be time-barred." Pet. App. 7a. The court held that the Code "does not preclude an FDCPA claim in the bankruptcy context." Pet. App. 15a. Although it agreed with the district court that the Code does not itself prohibit the knowing filing of a time-barred claim, the court explained that the Act, which applies only to "debt collectors," "addresses the later ramifications of filing [such] a claim." *Id.* at 12a. By filing a time-barred claim, which the court recognized was an "unfair" and "deceptive" debt collection practice under the Act, a debt collector "is simply opening [itself] up to a potential lawsuit for an FDCPA violation." *Id.* at 14a (internal quotation marks omitted). Because the Act prohibits certain predatory conduct by debt collectors even if that conduct is not separately prohibited by the Code, the court explained that "the Code does not . . . protect those creditors from all liability." *Id.* at 2a. Accordingly, the court held, the two statutory schemes can be "reconciled." *Id.* at 12a.

3. The court of appeals denied rehearing en banc without a vote. Pet. App. 16a-17a.

---

[27] Other courts have since held that this conduct does not violate the FDCPA, two of them over vigorous dissents. See *Owens* v. LVNV Funding, LLC (7th Cir. 2016) (Wood, C.J., dissenting); *In re Dubois*, 834 F.3d 522 (4th Cir. 2016) (Diaz, J., dissenting).

SUMMARY OF ARGUMENT

Contrary to Midland's contention, the FDCPA prohibits filing proofs of claim on knowingly time-barred debt.

I. Midland's clear abuse of the bankruptcy process violates the FDCPA. Midland represents that its time-barred claims are valid and enforceable when it knows the opposite is true. This deceives debtors and creates obvious risks of illegitimate claims slipping through the process unnoticed.

Midland also exploits the claims-allowance process to collect when the system *malfunctions*. Midland engages in a systemic effort to "flood" bankruptcy proceedings with thousands of time-barred claims. Midland files these claims without any legitimate basis or useful purpose. There is *no* scenario in which these claims survive under proper review: Midland's claims are invalid and will be universally rejected if the process functions as Congress intended. Midland's entire scheme is premised on the hope that the system will break down and fail—as it predictably does when debtors fail to object and trustees fail to weed out invalid claims. This flagrant abuse imposes needless costs on courts and innocent parties; it is exactly the kind of false, deceptive, and unfair practice that the FDCPA was designed to avoid.

As the Eleventh Circuit held in *Crawford*, the same acts that violate the FDCPA outside bankruptcy also violate the FDCPA within it. Courts routinely hold that debt collectors violate the FDCPA by filing state-court litigation over time-barred debts. See, *e.g.*, *Phillips* v. *Asset Acceptance, LLC*, 736 F.3d 1076, 1079 (7th Cir. 2013). The same rationale applies in this context: there is no reason that debt collectors suddenly have more freedom to pursue stale claims once debtors enter bankruptcy. Ironically, had Johnson not declared bankruptcy,

Midland indisputably would have no right to demand payment from anyone. Bankruptcy promises a fresh start by forgiving debt. Midland's attempt to use bankruptcy to *add* debt flips the system on its head.

II. Midland says that its behavior is justified by the Code, but Midland is incorrect. The Code, unremarkably, does not tolerate claims that should always lose unless something goes wrong. Midland has no good-faith basis for pursing indisputably time-barred claims, and its contrary position is at odds with the Code's text, structure, and purpose. There is no "right" to file knowingly time-barred claims.

III. Midland is also incorrect that the Bankruptcy Code repealed the FDCPA *by implication*. Such repeals must be established through "clear text" or "irreconcilable conflict" (*J.E.M. Ag Supply, Inc.* v. *Pioneer Hi-Bred Int'l, Inc.*, 534 U.S. 124, 143-144 (2001); *Morton* v. *Mancari*, 417 U.S. 535, 550 (1974)), and Midland fails that heavy burden.

A. Midland concede that there is no *textual* preclusion. Put simply, nothing in the Code or the FDCPA possibly qualifies as a "clear statement" that one scheme precludes the other.

B. 1. Nor is there any irreconcilable conflict. As explained above, the FDCPA prohibits what the Code does not even allow, and its application would not undermine the Code, but *promote* it. Because nothing compels (or even permits) an act under one scheme that violates the other, there is no conceivable "conflict."

2. The FDCPA survives the Code even if parties had a "right" to file knowingly baseless claims. There is no conflict where a party can easily comply with each scheme by voluntarily refraining from targeted behavior. The Code creates a *permissive* right to file a claim; no one is compelled to take any act under the Code that is

forbidden by the FDCPA. The fact that professional debt collectors are singled out for additional regulation does not create a conflict; it merely reflects Congress's considered judgment that this particular group imposes heightened risks of public harm, and its behavior must be restricted in ways that do not affect ordinary creditors.

Congress intended the FDCPA to fill the gaps of other laws, and it does that here. Professional debt collectors are purchasing huge portfolios of knowingly stale claims, and flooding bankruptcy courts with claims that are undeniably unenforceable. While individual claims may impose little harm, the aggregate effect of this practice is staggering. Congress had every reason to impose additional restrictions on groups that tend to abuse the system to collect debts. It was aware that existing remedies were not always adequate to deter wrongful collection practices, and it intended the FDCPA to overlap with those schemes to provide added protection. The remedies available under the Code for *ordinary* creditors are not calibrated to handle the business methods of debt collectors. The FDCPA performs that role, and Midland errs in refusing to accept this superimposed scheme as Congress intended. The judgment should be affirmed.

ARGUMENT

I. THE FDCPA PROHIBITS KNOWINGLY FILING A PROOF OF CLAIM ON TIME-BARRED DEBT IN A CHAPTER 13 BANKRUPTCY

As the court of appeals correctly held, filing a knowingly time-barred proof of claim violates the FDCPA. 758 F.3d at 1256-1257. That is exactly what Midland has done here: it filed a proof of claim without any good-faith belief that it was an enforceable obligation. On its face,

the debt involved a transaction from over *twelve years* ago (May 28, 2003); the original creditor charged off the debt on January 5, 2004, still over a *decade* ago. Dkt. 1-1 at 3. The limitations period is only six years (at most), meaning the last chance to sue expired in May 2009. Dkt. 21 at 1 & n.1.

Midland submitted this proof of claim without any plausible legal theory that it should be paid out of estate funds. Midland's only hope was that the debtor may unwittingly "fail to object" and the trustee may "fail[] to fulfill its statutory duty to object to improper claims." *Crawford*, 758 F.3d at 1259 n. 5, 1261. The Code's automatic-allowance provision (11 U.S.C. 502(a)) would then force Johnson to "pay the debt from h[er] future wages as part of the Chapter 13 repayment plan, notwithstanding that the debt is time-barred and unenforceable in court." *Id.* at 1259. This renders Midland's actions "'unfair,' 'unconscionable,' 'deceptive,' and 'misleading' within the broad scope of § 1692e and § 1692f." *Id.* at 1260.

A. Midland Violates The FDCPA By Falsely Representing That Its Time-Barred Claims Are Valid And Enforceable When It Knows Exactly The Opposite Is True

The FDCPA "specifically prohibits the false representation of the character or legal status of any debt" (*McMahon*, 744 F.3d at 1020), which precisely describes Midland's conduct. Its claims are indisputably time-barred and unenforceable. Yet "[i]n the context of the Bankruptcy Code's automatic claims allowance process, the filing of a proof of claim amounts to an assertion that the underlying claim is enforceable and that the claimant is entitled to be paid out of the bankruptcy estate." *Feggins* v. *LVNV Funding LLC (In re Feggins)*, No. 13-11319-WRS, 2015 Bankr. LEXIS 2822, at *15-*16 (Bankr. M.D. Ala. Aug. 24, 2015).

Midland has abused this process and taken unfair advantage of default rules declaring its claims "prima facie" valid when it knows the opposite is true. Its conduct is misleading because some debtors will understandably assume that Midland's claims are indeed "valid" despite their patent unenforceability. And its conduct is deceptive because it includes these invalid claims in a busy process designed for legitimate claims—where it is hardly surprising that invalid claims get lost in the shuffle. This conduct squarely violates the FDCPA, and Midland's contrary contention is meritless.

1. Defendants misrepresent the "character" and "legal status" of time-barred debts. 15 U.S.C. 1692e, 1692e(2)(A), 1692e(10).

"Whether a debt is legally enforceable is a central fact about the character and legal status of that debt." *McMahon*, 744 F.3d at 1020. Under the Code's background rules, however, *all* claims are automatically deemed "prima facie" valid. *Gardner* v. *New Jersey*, 329 U.S. 565, 573 (1947); see also Fed. R. Bankr. P. 3001(f) ("A proof of claim executed and filed in accordance with these rules shall constitute prima facie evidence of the validity and amount of the claim."); 11 U.S.C. 502(a).

Midland exploits these rules. It is aware that its claims are not properly entitled to a presumption of validity—indeed, quite the opposite. Yet Midland never discloses that its claims are "prima facie" *invalid* or makes any corrective statement to avoid deceiving the court or other parties. Cf. *McMahon*, 744 F.3d at 1021 ("Neither LVNV nor CMS gave a hint that the debts that they were trying to collect were vulnerable to an ironclad limitations defense."). Midland simply leverages "the misleading impression * * * that the debt collector can legally enforce [a] debt" that indisputably cannot be

enforced. *Crawford*, 758 F.3d at 1261; see also *Buchanan*, 776 F.3d at 396.

Midland seeks to excuse itself by saying the Rules did not *require* it to make any disclosures. Br. 28. But Midland is aware of the Code's default presumption, and it is aware of the obvious impression left by filing a proof of claim. By choosing to participate in the process, Midland is necessarily representing that its claims are enforceable. That deception violates the FDCPA: "[A] time-barred claim is unenforceable within the meaning of the Bankruptcy Code, so a debt collector who knowingly files such a claim in bankruptcy is falsely asserting that it is entitled to be paid." *Feggins*, 2015 Bankr. LEXIS 2822, at *16.

Midland also contends that its claims were literally true: it "accurately" recounted all the required information on a court-approved form and "made the required disclosures * * * correctly and completely." Br. 27-28. Perhaps so.[28] But "the statute outlaws more than just falsehoods"; "even a true statement may be banned for creating a misleading impression." *Buchanan*, 776 F.3d at 396 (Sutton, J.); see also *Gammon* v. *GC Servs. Ltd. P'ship*, 27 F.3d 1254, 1258 (7th Cir. 1994) (Easterbrook, J., concurring) ("literal truth may convey a misleading impression").

---

[28] Or perhaps not: Midland may have accurately stated the relevant facts of the transaction, but the filing itself is a bottom-line declaration that the claim is presumptively "valid" and entitled to be paid—which is the automatic result if no one objects. 11 U.S.C. 502(a). The unavoidable representation is that Midland was entitled to relief, which it knew was false. See *Robinson* v. *eCast Settlement Corp.*, No. 14-CV-8277, 2015 WL 494626, at *3 (N.D. Ill. Feb. 3, 2015) (a proof of claim bears "an implicit representation of legal enforceability").

Even were Midland's filings literally true, they still used deceptive *means* to foster the misleading impression that time-barred debts were enforceable. A professional debt collector cannot excuse itself by including half-truths about a debt's amount or age—Midland still wrongly included stale debts in a process reserved for *enforceable* claims.

Finally, Midland makes much of the fact that the Advisory Committee declined to require an affirmative statement regarding timeliness when it last amended Rule 3001(c). Br. 20-21, 28. But Midland again only tells half the story: The working group was concerned about *good-faith* claims where creditors were genuinely unsure about the timeliness of a claim; they were not giving a pass to creditors who knowingly file invalid claims. See *Agenda Book for the Meeting of the Advisory Committee on Bankruptcy Rules* 86-87, 90 (Mar. 26-27, 2009) <tinyurl.com/2009agenda> ("some members of the subcommittee believed that there are too many factors involved with a statute of limitations defense for a claimant to be able to affirmatively certify that it is inapplicable"). Indeed, the working group expressly recognized that Rule 9011 "imposes an obligation on a claimant" to undertake a reasonable pre-filing inquiry and determine that "a claim is warranted by existing law and that factual contentions have evidentiary support." *Id.* at 87. And the Advisory Committee again confirmed that claims complying with Rule 3001(c) "constitute[] prima facie evidence of the validity and amount of the claim." Fed. R. Bankr. P. 3001 advisory committee's notes (2012).

The resulting message is inescapable: The committee did not expect claimants to conduct a good-faith inquiry under Rule 9011 only to *ignore* the result and file baseless claims anyway—and they assuredly did not provide any reason to think that claims *found to be invalid*

should be deemed "prima facie" valid and enforceable. The rule amendments only confirm Midland's misconduct: it shows that Midland has no basis for filing defective claims in a process reserved for enforceable obligations, and it violates Rule 9011 by determining the untimeliness of its claims and then filing anyway. Its abusive scheme fits comfortably within the FDCPA, and nothing in the Code washes away its misrepresentations.[29]

2. Midland's conduct is also deceptive. Apart from the potential to mislead or confuse debtors who actually read the proof of claim, it also has the potential to slip through the process unnoticed. The very act of cloaking the claim with presumptions of "validity" reduces the odds that others engage in a studied review, spot the known defect, and object:

> The typical federal court disposes of hundreds of cases each year—a bankruptcy court disposes of thousands. It is not uncommon to see dozens of attorneys in a bankruptcy courtroom, presenting arguments and objections on a long list of cases, with rulings issuing at pace that makes a cattle auction appear lei-

---

[29] Contrary to Midland's contention (Br. 27-29), *Sheriff* v. *Gillie*, 136 S. Ct. 1594 (2016), does not help its position. In *Sheriff*, the Court held that special counsel's use of agency letterhead did not "falsely" imply an affiliation with the Attorney General—because special counsel *was in fact affiliated with the Attorney General*. 136 S. Ct. at 1601-1602. The challenged "impression" was not false or misleading because the impression was *true*. *Id.* at 1602-1603. Here, however, the same *cannot* be said of Midland's proofs of claim. It makes no difference that those claims disclosed half-truths about the debts, because Johnson is not challenging those half-truths; again, she is challenging the core assertion that Midland's claims are valid and enforceable—facts Midland knew were false before it deliberately fostered the opposite impression with its claims.

> surely. A bankruptcy court does not have the time district courts devote to a motion, to examine each petition, proof of claim, and objection; the bankruptcy judge must rely on counsel to act in good faith. The potential for mischief to be caused by an attorney who is willing to skirt ethical obligations and procedural rules is enormous.

Young v. *Young (In re Young)*, 789 F.3d 872, 879 (8th Cir. 2015) (internal quotation marks omitted).

Midland takes advantage of this process to create the impression that its claims are valid and enforceable, thus misstating the "character" and "legal status" of the debt. 15 U.S.C. 1692e, 1692e(2)(A), 1692e(10). This again violates the FDCPA.

3. Midland argues that its conduct would not have misled or deceived a "competent attorney," and its conduct should be measured against that heightened standard. Br. 29-30 (opposing use of the "unsophisticated consumer" alternative); compare, *e.g.*, *Wallace* v. *Wash. Mut. Bank, F.A.*, 683 F.3d 323, 326 (6th Cir. 2012) (asking whether a "statement would tend to mislead or confuse the reasonable unsophisticated consumer"). Midland is incorrect.

Midland's representations are designed to deceive unrepresented debtors or mislead busy attorneys and trustees who have neither the time nor the resources to review invalid proofs of claim. Because the process often relies on consumer debtors as the ultimate backstop, Midland's representations should be reviewed on the assumption that the debtor herself (*not* her attorney) will review these claims. See *Evory* v. *RJM Acquisitions Funding L.L.C.*, 505 F.3d 769, 774 (7th Cir. 2007) (the FDCPA standard is "different when the conduct is aimed at a lawyer than when it is aimed at a consumer").

Indeed, Midland's communications are not directly aimed at lawyers. These are court filings in a busy process that *may or may not* be reviewed by attorneys. This fact is an essential component of Midland's scheme: If these communications *always* reached competent professionals (with time to review them), Midland's claims would be rejected 100% of the time, and Midland would stop misusing the claims-process.[30] Midland's business model critically relies on claims slipping through the process without any educated review. Given that Midland only collects when lawyers and trustees do *nothing*, it is a bit much for Midland to insist that those groups always review these claims.[31]

Nor is it relevant that Johnson herself was represented by an attorney. Contra Br. 30. This overlooks the FDCPA's private-attorney-general function. See, *e.g.*, *Tolentino* v. *Friedman*, 46 F.3d 645, 651-652 (7th Cir. 1995). The FDCPA is designed to avoid and deter abu-

---

[30] The only exception: There are instances where competent professionals do review Midland's meritless claims but simply acquiesce to avoid the cost of an objection. Those claims may not mislead or deceive anyone, but that hardly excuses Midland's misconduct: it is highly abusive to file frivolous claims knowing that the nuisance value will result in an illegitimate payout. Even if Midland somehow escapes liability under Section 1692e (due to the sheer obviousness of the defects in its filings), its misuse of the claims-process is still grossly unfair and unconscionable under Section 1692f.

[31] This accordingly is unlike a situation where a debt collector sends direct communications exclusively to attorneys. Midland's court filings can be viewed by anyone, including unrepresented debtors (as is sometimes the case). Had Midland somehow restricted its filings to a debtor's lawyer, it would at least have some basis for assessing liability under a heightened standard. But these filings were not *directed* at counsel; they were submitted to the court, in the hope that no one (most of all any competent lawyer) would ever review them.

sive practices. Plaintiffs who are *not* deceived are permitted (and encouraged) to file suit in order to protect consumers who would otherwise fall victim to debt-collector misconduct. See *Crawford*, 758 F.3d at 1258 ("[t]he inquiry is not whether the *particular* plaintiff-consumer was deceived or misled") (emphasis added). It is accordingly irrelevant that Johnson was represented. That is not always the case for many consumers, which is precisely why Midland continues exploiting the system. The FDCPA deters Midland from wasting everyone's time and serves as a safeguard for those consumers who cannot otherwise protect themselves.

B. Midland Violates The FDCPA By Exploiting The Claims-Allowance Process To Collect When The System *Malfunctions*, Not When It Operates As Congress Intended

Midland also violates the FDCPA by using "unfair or unconscionable means to collect or attempt to collect" time-barred debts. 15 U.S.C. 1692f. Midland succeeds only when the bankruptcy process breaks down and fails—as it routinely does. Its claims have no legitimate purpose: there are *zero* circumstances where Congress intended time-barred claims to divert funds from the estate. Midland simply exploits unintended flaws in the process, at the expense of vulnerable debtors and innocent creditors. Its scheme is "'unfair,' 'unconscionable,' 'deceptive,' and 'misleading' within the broad scope of § 1692e and § 1692f." *Crawford*, 758 F.3d at 1260.

1. Midland engages in a flagrant misuse of the bankruptcy process. As described above, proofs of claim are automatically "allowed" unless someone objects. 11 U.S.C. 502(a). Under this automatic-allowance procedure, all unchallenged claims—even patently *invalid* claims—are included by default in distributions. This permits the system to function efficiently. But it also

creates opportunities for abuse: creditors with defective claims can "unfairly game[] the system by taking advantage of the automatic claims allowance process," "camouflaging [their claims] among the inundation of other claims filed," and hoping to "slip past the bankruptcy court's supervision unnoticed." *Feggins*, 2015 Bankr. LEXIS 2822, at *16. These bad-faith actors know that if the process breaks down, they will illegitimately collect on unenforceable claims, flouting Congress's intent.

Most legitimate debt-collection efforts work within the system's intended operation; Midland's business model, by contrast, is predicated entirely on system failure.[8] Midland knowingly floods bankruptcy courts with time-barred claims in the hope of collecting unenforceable debts. These claims have no legal justification. *Avalos*, 531 B.R. at 757. Midland does not (and *cannot*) contend that it has any good-faith basis for these filings. Midland's only hope is that the system *malfunctions*: the debtor may unwittingly "fail to object" and the trustee may "fail[] to fulfill its statutory duty to object to improper claims." *Crawford*, 758 F.3d at 1259 n.5, 1261. When that happens, Midland can force debtors to "pay the debt from [their] future wages as part of the Chapter 13 repayment plan, notwithstanding that the debt is time-barred and unenforceable in court." *Id.* at 1259.

This scheme is "an abuse of the claims allowance process and an affront to the integrity of the bankruptcy

---

[8] System failure is also all too predictable. Consumer debtors may review claims without an attorney, and many unrepresented debtors are unaware of limitations defenses. While trustees are likely aware of limitations defenses, they may not devote their limited time and resources to inspecting claims. Midland, by design, takes improper advantage of these predictable deficiencies.

court." *Feggins*, 2015 Bankr. LEXIS 2822, at *12. Midland imposes pointless costs on courts and innocent parties without any offsetting societal value or public benefit. In the best-case scenario, the debtor or trustee is burdened with the hassle and expense of filing needless objections, and the court is forced to waste its time and resources rejecting baseless claims; in the worst-case scenario, the process breaks down and allows invalid claims, diverting limited funds from vulnerable debtors and honest creditors. The process is sufficiently taxed without the deliberate filing of baseless claims. Midland's attempt to profit from system-error is unfair and unconscionable, and it violates the FDCPA.

2. Midland insists that its scheme is a fair and legitimate use of the bankruptcy process, but it is mistaken.

According to Midland, Congress *invited* parties to file knowingly time-barred claims. Br. 31. Yet as explained more below (Part II, *infra*), Congress did not invite or tolerate the filing of frivolous claims.

In practice, Midland effectively concedes that its knowingly time-barred claims are "baseless" or "frivolous." It is difficult to imagine a better characterization for a claim that is indefensible in court: once anyone lodges an objection, Midland immediately throws in the towel. It simply withdraws or abandons the stale claim, because it has no colorable basis for defending why it previously asserted a "right to payment." When a party asserts that it has a "valid" claim—when it knows it has an *invalid* claim—it has filed (in common parlance) a *frivolous* claim. See, *e.g.*, *Feggins*, 2015 Bankr. LEXIS 2822, at *15-*16.

Nor is Midland's practice somehow "fair" because its claims clearly state information that can be used to determine if the debt is time barred. Br. 32. This same information is available to *Midland*, who thus knew its

claims were time-barred but filed anyway. It is hardly an excuse that others—absent system failure—might figure out what Midland already knew before "burden[ing]" the system with frivolous claims. *In re Sekema*, 523 B.R. 651, 655 (Bankr. N.D. Ind. 2015) (sanctioning debt collectors with a fine "reflect[ing] an appreciation of the system-wide burdens created by this type of misconduct").

Moreover, Midland cannot offer a single legitimate reason that its participation actually benefits anyone—other than itself. It does not benefit the debtor, who is already protected from enforcement (time-barred debts are only "moral" obligations, not legal ones). See also Part II, *infra*. It does not benefit the trustee, who already has enough on her plate without wasting time and resources objecting to frivolous claims. It does not benefit legitimate creditors, whose proper share is diminished when the system wrongly permits recovery on time-barred debts. If the system operates without error, those debts will be categorically excluded. There is no universe in which the process is frustrated when debt collectors refrain from filing frivolous claims.

C. The Same Baseless Filings That Would Violate The FDCPA In State Court Also Violate The FDCPA In Bankruptcy

As even Midland effectively admits, it could not file time-barred claims in state court without violating the FDCPA. *Phillips*, 736 F.3d at 1079 (invoking 15 U.S.C. 1692e, 1692f); see also *Freyermuth* v. *Credit Bureau Servs., Inc.*, 248 F.3d 767, 771 (8th Cir. 2001). Midland, however, insists that it can sidestep the FDCPA by pursuing the same stale debt in bankruptcy, because bankruptcy is "different" and Chapter 13's "safeguards" protect debtors. Br. 34-38. Midland is wrong.

1. As the Eleventh Circuit held in *Crawford*, in every relevant respect, the reasons "for outlawing stale suits to

collect consumer debts" (*Phillips*, 736 F.3d at 1079) are "[t]he same * * * in the bankruptcy context." *Crawford*, 758 F.3d at 1260. Here, as in ordinary litigation, knowingly time-barred claims take unfair advantage of debtors, deliberately "creat[ing] the misleading impression" that debts can be enforced. *Id.* at 1261. Indeed, the entire point of Midland's scheme is to deceive debtors into "unwittingly" accepting stale debt. *Phillips*, 736 F.3d at 1079. Likewise, debtors will often give up rather than fight a frivolous claim: "filing objections to time-barred claims consumes energy and resources in a debtor's bankruptcy case, just as filing a limitations defense does in state court." *Crawford*, 758 F.3d at 1261. Here, as in state court, frivolous claims may survive simply because no one has sufficient incentive to oppose them.

"In bankruptcy," as in ordinary litigation, "the limitations period provides a bright line for debt collectors and consumer debtors, signifying a time when the debtor's right to be free of stale claims comes to prevail over a creditor's right to legally enforce the debt." *Crawford*, 758 F.3d at 1260-1261. The FDCPA "outlaw[s]" time-barred claims in state court (*Phillips*, 736 F.3d at 1079); there is no reason that Congress intended to provide *less* protection once debtors enter bankruptcy. See, *e.g.*, *Butner* v. *United States*, 440 U.S. 48, 55 (1979).

2. Midland, however, argues that Chapter 13 debtors are protected by attorneys and trustees. Midland insists that these safeguards operate effectively, but it has no answer for this simple question: If bankruptcy's safeguards always functioned, why are Midland's time-barred claims ever allowed? Midland failed to cite a *single* reason that its claims would ever survive a proper objection. So why does Midland recover with sufficient frequency to make this a viable business model?

The answer is obvious: Bankruptcy's "safeguards" are *not* adequate. Midland is well aware of the deficiencies in the process, because its entire practice turns on exploiting those deficiencies. If the process functioned as Congress intended, its claims would be rejected 100% of the time, and it would stop "flooding" the courts with frivolous claims.

Indeed, while Chapter 13 debtors are often represented by lawyers, not all consumer debtors have lawyers, and not all lawyers are retained to review claims or file objections. It is wrong to presume that attorneys retained for the overall bankruptcy have also been paid to review proofs of claim. And every time debtors are unrepresented (or a representation's scope is limited), debtors alone are forced to review claims and identify defenses. Those debtors are materially indistinguishable from debtors in state-court litigation.

Nor is it fair to ask debtors to hire attorneys to object to Midland's time-barred filings. See *Birtchman*, 2015 WL 1825970, at *9 (suggesting debtors would incur only "minimal" expense for "the additional legal work required" to challenge time-barred claims). The cost of even a few hundred dollars is a meaningful expense to Chapter 13 debtors—it can mean the difference in a debtor's ability to meet basic needs for herself and her family. And even if frivolous claims prompt only "straightforward" objections (*ibid.*; Pet. Br. 32), someone must still review the claim, confirm the limitations period, prepare the objection, and file that objection with the court, which must then review and adjudicate the issue. Even if that entire process consumes only an hour of everyone's time—an exceedingly low estimate—the aggregate cost of filing hundreds of thousands of claims quickly reaches staggering proportions. See, *e.g.*, *Jenkins* v. *Genesis Fin. Solutions, LLC (In re Jenkins)*, 456

B.R. 236, 241 (Bankr. E.D.N.C. 2011) ("The issue is a real one, the problem is widespread, and it burdens both debtors and the courts."). Given the lack of any redeeming value in Midland's practice, this significant expense is hardly warranted.[33]

Midland further insists that debtors are adequately protected by trustees: even with "unrepresented" debtors, trustees have an independent statutory obligation to object to improper claims, including those barred by the statute of limitations. Br. 31; see also *LaGrone* v. *LVNV Funding LLC (In re LaGrone)*, 525 B.R. 419, 426 (Bankr. N.D. Ill. 2015).

This logic flips the statutory scheme on its head. The FDCPA bans "abusive, deceptive, and unfair" practices. 15 U.S.C. 1692(a). Debt collectors cannot possibly avoid the FDCPA by suggesting that their practice is so egregious that Congress *compelled* trustees to ferret out and attack it. If these claims had any legitimate purpose, Congress would not have charged trustees with automatically objecting the moment the claims are filed. The trustees' "statutory obligation" only underscores precisely why this conduct violates the FDCPA; it hardly excuses it.

In any event, as a practical matter, trustees do *not* adequately protect debtors. Debt collectors know that trustees cannot feasibly object to every baseless claim. Trustees are charged with multiple duties and obligations, and they operate under difficult circumstances

---

[33] In many situations, the cost of objecting to the time-barred debt quickly approaches the amount of the debt itself. See *Suesz* v. *Med-1 Solutions, LLC*, 757 F.3d 636, 639 (7th Cir. 2014) (en banc). Debt collectors are very aware of this dynamic, and it explains why many parties simply acquiesce in baseless filings rather than invest time and resources filing an objection.

with limited time and resources. In light of these practical constraints, trustees simply cannot wade through each and every proof of claim filed in all Chapter 13 proceedings. See *Feggins* v. *LVNV Funding LLC*, No. 13-11319-WRS, 2015 WL 7424339, at *3 n.5 (Bankr. M.D. Ala. Nov. 20, 2015) (*Feggins II*) (trustee "testified that his office processes between 6,000 and 7,000 claims each month, and that there are between 18,000 and 19,000 pending Chapter 13 cases in this district"). Midland deliberately exploits this dynamic.

3. Midland also argues that its practice does not typically harm debtors, undercutting the case for FDCPA liability: "In the event a claim for a time-barred debt is ultimately allowed, moreover, it will ordinarily have no effect on the debtor." Br. 35 (suggesting "additional allowed claim[s]" usually reallocate the same amount among all the creditors, rather than increasing what the debtor pays). This is false.

It is clearly incorrect for Chapter 13 debtors with 100% plans, who end up paying dollar-for-dollar a debt that is unenforceable outside bankruptcy. It is even wrong for debtors not repaying 100% of unsecured debt: If the bankruptcy case is dismissed or converted to Chapter 7, debtors would owe more on outstanding debts due to amounts wrongly diverted to stale claims. *In re Freeman*, 540 B.R. 129, 135 (Bankr. E.D. Pa. 2015). Midland suggests this is a rare occurrence, but this Court recently explained otherwise: "Many debtors, however, fail to complete a Chapter 13 plan successfully." *Harris* v. *Viegelahn*, 135 S. Ct. 1829, 1835 (2015) ("only one in three cases filed under Chapter 13 ends in discharge"). Moreover, Midland also overlooks the entire, common category of non-dischargeable debts: categories like "child support, alimony, and certain unpaid educational loans and taxes." *Grogan* v. *Garner*, 498 U.S. 279, 287

(1991). Every dollar devoted to a time-barred claim leaves an extra dollar unpaid on the non-dischargeable balance of those important debts.

Contrary to Midland's contention, it is very clear that its conduct exacts a real cost on debtors, not just other the courts and creditors (who also suffer as a result). This conduct is not tolerated outside bankruptcy, and there is no reason that it should be tolerated within it.

D. Midland's Conduct Created A Direct And Immediate Risk Of Concrete Harm, And Johnson Plainly Has Article III Standing To Challenge Midland's Conduct

In a single footnote, Midland argues that Johnson lacks Article III standing. Br. 36 n.7. There is a reason this argument is in a footnote. Unlike some "bare procedural violation[s]," *Spokeo, Inc.* v. *Robins*, 136 S. Ct. 1540, 1549 (2016), this conduct imposes a real risk of actual harm, and it forces debtors to take action to prevent tangible injury: as in all bankruptcies, due to the clockwork claims-allowance process, debt collectors would automatically collect from the estate unless someone objects, despite filing unenforceable claims. This imposes serious risks and costs on all debtors, including Johnson.[34] Again, any debtor with a 100% Chapter 13 plan—repaying the full amount of all unsecured debt—is necessarily injured by including time-barred debts in the plan. Every penny wrongly distributed is taken from the debtor. And even debtors not repaying 100% of unse-

---

[34] It also imposes serious costs on honest creditors, but Plaintiff has standing even without seeking to vindicate those creditors' interests. Cf. 15 U.S.C. 1692(e) (the FDCPA is partly designed so "debt collectors who refrain from using abusive debt collection practices are not competitively disadvantaged").

cured debts face harm: If a stale claim had been allowed and her bankruptcy case were later dismissed (or converted to Chapter 7), she would owe more on her outstanding debts due to amounts wrongly diverted to Defendants. *Freeman*, 2015 WL 6735395, at *3. And, again, any amount diverted away from non-dischargeable debts comes directly out of the debtor's pocket.

Johnson was compelled to vindicate her rights to guarantee only legitimate creditors would be paid from her future earnings. This presents a distinct risk of concrete harm, and immediate action was required to protect Johnson's rights. Midland tried to collect the actual money coming from her actual wages that would otherwise pay down her actual debts. Contrary to Midland's unusual view, Johnson has standing even though Midland's attempt to abuse the process fell short.

II. MIDLAND IS ENGAGED IN A CLEAR ABUSE OF THE BANKRUPTCY PROCESS

According to Midland, debt collectors have a "right" to file time-barred proofs of claim, despite having no good-faith belief that these claims are actually enforceable. Midland is mistaken. There is no absolute "right" (in *any* functioning legal system) to file *losing* claims. Midland's position is at odds with the Code's plain text, clear structure, and legislative purpose. Its abusive conduct burdens the bankruptcy process and harms innocent parties; it has no social value or public benefit. Midland is engaged in a clear abuse of the bankruptcy system, and the Code accordingly does not shield its misconduct under the FDCPA.

A. As Matter Of Law And Logic, There Is No "Right To Payment" For Unenforceable Claims

Midland's assertion of a "right" to file time-barred claims is incompatible with the Code's plain text. A claim is defined as a "right to payment," 11 U.S.C. 101(5)(A),

and "[t]he plain meaning of a 'right to payment' is nothing more nor less than an *enforceable obligation*," *Pa. Dep't of Pub. Welfare* v. *Davenport*, 495 U.S. 552, 559 (1990) (emphasis added); accord *FCC* v. *NextWave Pers. Communs. Inc.*, 537 U.S. 293, 303 (2003); *Cohen* v. *de la Cruz*, 523 U.S. 213, 218 (1998); *Johnson* v. *Home State Bank*, 501 U.S. 78, 83-84 (1991). This Court has accordingly affirmed that only "enforceable" claims are authorized under 11 U.S.C. 101(5)(A), and it is axiomatic that stale claims are *not* "enforceable." See, *e.g.*, *Crawford*, 758 F.3d at 1261 (a time-barred claim is "unenforceable"); *McMahon*, 744 F.3d at 1020 (time-barred claims are not "legally enforceable"); *Huertas* v. *Galaxy Asset Mgmt.*, 641 F.3d 28, 32 (3d Cir. 2011) (the statute of limitations "renders [the debt] unenforceable"). Because Midland has no "right to payment," it also has no "right" to file these claims, and its contrary contention is baseless.

1. Midland responds (Br. 22 & n.5) that this Court did not mean what it plainly said in (repeatedly) limiting Section 101(5)(A)'s "right to payment" to an "enforceable obligation." While Midland hopes to distinguish these cases on their facts, it overlooks that each case shares a critical common feature: all the claims at issue, unlike those here, were *legally enforceable*. See, *e.g.*, *NextWave*, 537 U.S. at 303 (discussing an *enforceable* regulatory condition); *De La Cruz*, 523 U.S. at 218 (discussing an *enforceable* award of treble damages); *Johnson*, 501 U.S. at 83-84 (discussing an *enforceable* mortgage interest); *Davenport*, 495 U.S. at 559-600 (discussing an *enforceable* restitution obligation). This commonality underscores precisely what Midland's claim lacks—"nothing more *nor less*"—and why its theory is indefen-

sible under this Court's authoritative construction of the Code.[35]

Midland also argues that it still has a "right to payment" because Alabama's time-bar "extinguishes the remedy" but not the underlying debt. Br. 17. This is exactly backwards. State law may preserve the underlying obligation, but it is no longer an "*enforceable*" obligation. See Ala. Code § 6-2-30(a) ("[a]ll civil actions must be commenced * * * within the period prescribed in this article *and not afterwards*") (emphasis added); *Huertas*, 641 F.3d at 32 ("Huerta's debt obligation is not extinguished by the expiration of the statute of limitations, *even though the debt is ultimately unenforceable in a court of law*") (emphasis added). Time-barred claims impose *moral* obligations, not legal ones. "[S]ome people might consider full debt re-payment a moral obligation even though the legal remedy for the debt has been extinguished," but the claim itself is not "legally enforceable." *McMahon*, 744 F.3d at 1020; see also *Crawford*, 758 F.3d at 1261 (time-barred claims are "unenforceable").[36]

---

[35] Midland says that *Davenport* shows "a 'claim' can exist under the Code regardless of the creditor's ability to obtain a monetary judgment." Br. 22. But Johnson's point is not that all debts must be enforceable via "monetary judgment," but that there must be *some means of enforcing the debt*. *Davenport* identified a legal "enforcement mechanism" that guaranteed a "right to payment," thus satisfying *Davenport*'s own standard. 495 U.S. at 559-560. Midland's problem is not simply that it cannot enforce its claim in a civil proceeding, though it plainly cannot, see, *e.g.*, *Phillips* v. *Asset Acceptance, LLC*, 736 F.3d 1076, 1079 (7th Cir. 2013); Midland's problem is that it cannot enforce its claim *anywhere*.

[36] The plain language of Alabama's limitations provision further eliminates any argument that time-barred debts are "enforceable" until the debtor objects. On its face, Alabama's time-bar expressly applies to actions *before* they are filed. While defendants might acci-

Parties have no right to share in an estate's limited assets—and divert funds from legitimate creditors—based on a "moral" obligation alone. Unless the "right" is "enforceable," it does not qualify under the Code. Because Midland has no corresponding "right to payment," it has no basis for filing a proof of claim under Section 501(a).[37]

2. Nor is Midland correct that this settled law somehow contradicts this Court's pronouncements that "rights to payment" are defined by state law, not federal law. Br. 16-17. Federal law defines "right to payment" as a legally "enforceable" right; state law determines whether a right is legally enforceable. That leaves the federal statute with its (unitary) federal meaning, while still letting "state law govern[] the substance of claims." *Travelers Cas. & Surety Co. of Am.* v. *Pac. Gas & Elec. Co.*, 549 U.S. 443, 450 (2007) (internal quotation marks omitted); see also *ibid.* ("Accordingly, when the Bankruptcy Code uses the word 'claim'—which the Code itself

---

dentally forfeit or waive that protection (by malpractice or mistake), the debt is unenforceable when the claim is wrongly filed.

[37] Midland asserts that a "proof of claim" under 11 U.S.C. 501(a) must include *knowingly unenforceable claims* because 11 U.S.C. 502(b)(1) says that a "claim" can be rejected as "unenforceable." Br. 19. This is mere semantics (and bad semantics at that): That same section, using the same words, is invoked to reject *fraudulent* claims, yet no one seriously maintains that a fabricated debt is a "claim." Congress did not have to write "purported" claim in Section 502(b)(1) to convey its obvious intent. Further, Section 501(a) is restricted (for the reasons discussed above) to claims supported by a good-faith belief in their enforceability. Even if a "claim" did not mean what this Court has said it means, the Code's structure—including Section 502(b)(1)'s procedure for striking time-barred claims—underscores that Congress did not permit parties to abuse the claims-process by filing knowingly indefensible claims.

defines as a 'right to payment'—it is usually referring to a right to payment recognized under state law.") (internal citation omitted). As with virtually all other States, Alabama says that debts are *not* legally enforceable after the limitations period expires, even if the underlying obligation remains. See, *e.g.*, *Ex parte Liberty Nat'l Life Ins. Co.*, 825 So.2d 758, 765 (Ala. 2007). Midland simply misunderstands the import of this common distinction. See, *e.g.*, *Buchanan* v. *Northland Group, Inc.*, 776 F.3d 393, 396-397 (6th Cir. 2015) (Sutton, J.) (recognizing the difference between the debt itself and its enforceability); *McMahon*, 744 F.3d at 1020 (Wood, C.J.) (same); *Huertas*, 641 F.3d at 32 (same).

3. Midland asserts that Congress intended for "claim" to be defined in the "'broadest possible'" manner, so any definition that excludes stale claims is necessarily wrong. Br. 16. Yet "broadest possible" does not mean limitless or incoherent. Congress expanded the definition of "claim" in important respects, but those respects were *enumerated*: things like "liquidated," "unliquidated," "fixed," "contingent," "unmatured," and "disputed." See, *e.g.*, *In re Charter Co.*, 876 F.2d 866, 869 (11th Cir. 1989) (explaining how Congress expanded the definition by "using the following broad language"). Stale claims fall outside this statutory category. Language suggesting that "disputed" claims can be filed hardly suggests that *indisputably invalid* claims may be filed. Those claims are already resolved as a legal matter; they are not "contingent," "disputed," or "unmatured"—they are simply (and indisputably) *unenforceable*. While the Code's definition captures "all *legal* obligations of the debtor, no matter how remote or contingent" (*ibid.*) (emphasis added), Congress did not capture solely "moral" obligations, which is all Midland now pursues.

Moreover, while the Code's definition of "claim" is indeed broad, Midland misunderstands Congress's objective: it wanted a process that could afford complete relief, so that "all *legal obligations* * * * will be able to be dealt with in the bankruptcy case." *Epstein* v. *Official Comm. of Unsecured Creditors of Estate of Piper Aircraft Corp.*, 58 F.3d 1573, 1576 (11th Cir. 1995). In a world in which parties could not file contingent or unmatured claims, parties would be shut out of the bankruptcy proceeding. H.R. Rep. No. 95-595, at 180 (1977). They could not share in the bankruptcy estate, and the debtor could not obtain full relief or a fresh start. Once those unresolved claims ripen, the debtor could be thrown back into debt, threatening the viability of any Chapter 13 plan and frustrating bankruptcy's objective.

Congress eliminated those concerns by widening the scope of "claims" to capture all claims with a "right to payment"—*i.e.*, an *enforceable obligation*. But nowhere did Congress suggest that this new definition of "claim" was intended to sweep in knowingly *invalid* claims. The goal was to bring all legitimate interests before the bankruptcy court. A party with a knowingly stale claim does not have any *legitimate* interest. It simply hopes to divert funds from the estate without any legal "right to payment." That behavior harms debtors and creditors alike, and there is no indication that Congress intended anyone to burden the process with such meritless claims.

Midland argues that the Code must not bar all unenforceable claims, as the Code "expressly brings claims that are not presently enforceable into the bankruptcy proceeding." Br. 18 (discussing claims that are "'contingent,' 'unmatured,' and 'disputed'"). This poses the wrong question: The Code asks whether the *obligation* is enforceable, not whether that obligation gives rise to an immediate right to sue in court. Consider, for example, a

"contingent" contract. It creates an *enforceable obligation* even if the contingency has not yet occurred. If one party disavows any future intent to perform, the other side assuredly can sue for breach.

Again, it makes sense that Congress deliberately captured all *enforceable* obligations to avoid the situation where claims ripening after bankruptcy (i) disrupt the debtor's fresh start or (ii) fail to receive a fair share of the estate (since the estate was already distributed). Neither of those concerns apply to Midland's time-barred debt, which will *never* ripen into an enforceable obligation.[38]

In short, Midland repeatedly insists that it has a "right to payment," but it cannot identify that right by *ipse dixit*; it failed to identify a single, non-voluntary, legal means of enforcing the time-barred debt. Midland can ask nicely to be repaid, but a debtor has every right to simply refuse. The lack of remedy eliminates the "right to payment," and Midland ignores the "plain meaning" of those words in suggesting otherwise. *E.g.*, *Davenport*, 495 U.S. at 559.[39]

---

[38] Midland maintains that Johnson's position would "erode" the Code's protections in the automatic stay. Br. 23. First, while Midland is correct that 11 U.S.C. 362(a)(6) only applies to "claims," Midland does not mention 11 U.S.C. 362(a)(3)—which arguably precludes *any* attempt to control estate property, including attempts to collect time-barred debts. Second, unenforceable debts were not the concern or focus of the Code. Debtors are "overburdened" by *enforceable* claims, not stale claims. The automatic stay prevents parties with actual *rights* from jumping ahead in line; a debtor does not obviously need relief from time-barred claims. *Harris*, 135 S. Ct. at 1835.

[39] While Johnson believes that the best reading of "claim" excludes time-barred debts, it is easy to address Midland's concerns by recognizing "claims" to include time-barred debts, but also rec-

B. A Purported "Right" To File Time-Barred Claims Is Directly At Odds With The Code's Structure And Purpose

Midland's argument is also at odds with the structure and purpose of the Code. Debt collectors have no "right" to file knowingly time-barred claims.

First, the notion that parties have a "right" to file stale claims is directly at odds with the trustee's statutory duty to *object* to stale claims. See 11 U.S.C. 704(a)(5), 1302(b)(1). There is no reason to think that Congress embraced the pointless exercise of authorizing creditors to file a time-barred claim just so the trustee could immediately object to the same claim. Bankruptcies are sufficiently busy without make-work.

Midland's business practice wastes limited judicial and party resources with no offsetting public benefit. There is no societal value to permitting a debt collector to purchase time-barred debts for pennies on the dollar, all in the hope of flooding bankruptcy courts with "hundreds of delinquent accounts" and "unenforceable" claims. *Id.* at 1256. That does not advance the "just, speedy, and inexpensive determination of every case and proceeding." Fed. R. Bankr. P. 1001; see also, *e.g.*, *In re Sekema*, 523 B.R. 651, 655 (Bankr. N.D. Ind. 2015) (sanctioning debt collectors for filing knowingly time-barred claims, and imposing a fine that "reflects an appreciation of the system-wide burdens created by this type of misconduct").

---

ognizing that parties cannot *file* a proof of claim without a good-faith basis. This preserves the automatic stay and permits the discharge of stale debts (where debtors schedule those debts to whatever gain), but does not permit the continued abuse of the bankruptcy process by the flood of knowingly time-barred claims.

Put simply: Why would any rational legislative body simultaneously grant an absolute "right" for one party to file a claim that another party has an absolute duty to reject? These time-barred claims will fail, by design, unless the trustee fails to discharge her legal obligations. That statutory design is incompatible with a purported "right" to file unenforceable claims.

Second, the entire point of the claims-process—as reflected by multiple Code provisions—is to efficiently and fairly process claims. That process is frustrated by attempts to bog down bankruptcy proceedings with knowingly invalid claims. Congress, again, would not have tasked trustees with a statutory duty to object to stale claims (11 U.S.C. 704(a)(5), 1302(b)(1)), only so debt collectors could try to slip them through. Nor would Congress have declared time-barred claims unenforceable (11 U.S.C. 502(b)(1), 558) if it wished parties to *knowingly* file unenforceable claims: there is sufficient work in every bankruptcy without inviting claims that are doomed for failure. And Congress would not have deemed claims "prima facie valid"—and presumptively enforceable—if it intended parties to file knowingly *invalid and unenforceable* claims. Compare *Gardner*, 329 U.S. at 573; Fed. R. Bankr. P. 3001(f).

The process is designed to function when all parties act in good faith; it is not designed to tolerate parties who abuse the system by filing meritless claims, all in the hope that the system breaks down and no one notices. *Young*, 789 F.3d at 879.

Nor is it necessary to include time-barred claims to achieve the primary goals of bankruptcy: a fresh start for the debtor and an equitable distribution of estate assets. A debtor does not need a fresh start from time-

barred debts; the *time-bar itself* provides the fresh start.[40]

Nor is it necessary to discharge debts to avoid future harassment from debt collectors: any debtor concerned about cutting off requests for *voluntary* repayment can always invoke 15 U.S.C. 1692c(c)—"[i]f a consumer notifies a debt collector in writing that the consumer refuses to pay a debt or that the consumer wishes the debt collector to cease further communication with the consumer, the debt collector shall not communicate further with the consumer." This FDCPA provision replicates the core effect of the discharge injunction.

Likewise, stale claims are unnecessary for the equitable distribution of estate assets. The "equitable distribution" on time-barred debt is *always* zero. Those debts are unnecessary to any functioning Chapter 13 plan. They are submitted only to take unfair advantage of the process in the hope of collecting when the system malfunctions. The multiple protections built into the system to *weed out* stale claims confirms that Congress did not want to usher in those same claims. Midland's contrary view is impossible to square with the structure or purpose of the Code.

---

[40] Midland also suggests that a discharge is necessary to avoid the exceedingly unlikely scenario that a debtor may somehow be subject to an unknown future suit in some hypothetical jurisdiction with a longer limitations period and no borrowing statute. Br. 25. Suffice it to say that this chain of events was unlikely on Congress's mind in deciding whether to endure the risk of not discharging stale debts. Moreover, there is no realistic concern of debtors facing discrimination for not paying stale debts (contra Pet. Br. 25); Midland overlooks other subsections of 11 U.S.C. 525 that provide expansive anti-discrimination coverage in the broadest swath of likely situations.

Finally, Midland's argument is out of step with baseline norms of good faith and acceptable litigation conduct. More specifically, courts routinely award sanctions for filing knowingly time-barred claims: "Where an attorney knows that a claim is time-barred and has no intention of seeking reversal of existing precedent, as here, he makes a claim groundless in law and is subject to Rule 11 sanctions." *Brubaker* v. *City of Richmond*, 943 F.2d 1363, 1385 (4th Cir. 1991); see also, *e.g.*, *FDIC* v. *Calhoun*, 34 F.3d 1291, 1299 (5th Cir. 1994); *White* v. *GM Corp.*, 908 F.2d 675, 682 (10th Cir. 1990).

That describes Midland's conduct exactly. Midland purchased time-barred debts at pennies on the dollar precisely because those debts are unenforceable. The affirmative defense is "blindingly obvious": "coming to the conclusion that the claims might be time-barred did not require either claimant to look beyond the information it already possessed." *Sekema*, 523 B.R. at 654. Nor does it matter that "the statute of limitations is an affirmative defense which must be pled or waived" (*Steinle* v. *Warren*, 765 F.2d 95, 101 (7th Cir. 1985)): "Rule 11 does not permit a plaintiff to avoid sanctions merely because the opposing party or the judge might not immediately recognize that the assertion is groundless." *Brubaker*, 943 F.2d at 1385; *Leeds Bldg. Prods.* v. *Moore-Handley, Inc. (In re Leeds Bldg. Prods.)*, 181 B.R. 1006, 1010 (Bankr. N.D. Ga. 1995); see also *In re Excello Press, Inc.*, 967 F.2d 1109, 1112-1113 (7th Cir. 1992).[41]

---

[41] Alabama law applies materially indistinguishable principles: "It is one thing to file a lawsuit where the claim is of debatable legitimacy or where the defense is doubtful, but it is quite another to file a claim knowing it to be without merit or knowing that there exists a complete defense. The court system exists for the resolution of gen-

Sanctions, in short, are "appropriate if any attorney knowingly file[s] suit on an undisputedly time-barred claim." *Goins* v. *JBC & Assocs., P.C.*, 352 F. Supp. 2d 262, 272 (D. Conn. 2005). That proposition is impossible to square with Midland's alleged "right" to file time-barred claims. The entire point of a sanction is that conduct is not merely prohibited, but so egregious to warrant *punishment*. There is no such thing as a "right" to engage in sanctionable conduct. See *Feggins*, 2015 Bankr. LEXIS 2822, at *18; *Smith* v. *Asset Acceptance, LLC*, 510 B.R. 225, 226 (S.D. Ind. 2013).

Congress legislates against the backdrop of established principles like Rule 11 authority and inherent judicial power to sanction frivolous behavior. See *Fogerty* v. *Fantasy, Inc.*, 510 U.S. 517, 534 (1994). It follows that whatever "right" Congress conferred in the Code presumptively does not extend to frivolous filings. If Congress intended to create a "right" for debt collectors to file time-barred claims (without any discernible justification), Congress surely would have done so with clearer language than this.

III. MIDLAND CANNOT MEET ITS HEAVY BURDEN OF ESTABLISHING THAT THE BANKRUPTCY CODE REPEALS THESE FDCPA CLAIMS

"'[W]hen two statutes are capable of coexistence, it is the duty of the courts, absent a clearly expressed congressional intention to the contrary, to regard each as effective.'" *J.E.M. Ag Supply, Inc.* v. *Pioneer Hi-Bred*

---

uine disputes, and must not be used as a means of coercing a party either to pay a debt that he does not owe or be compelled to expend a greater sum to defend an illegitimate claim." *Empiregas, Inc.* v. *Feely*, 524 So.2d 626, 628 (Ala. 1988) (so holding in the context of a malicious-prosecution suit based on the filing of a knowingly time-barred claim).

Int'l, Inc., 534 U.S. 124, 143-144 (2001); *Morton* v. *Mancari*, 417 U.S. 535, 550 (1974). Midland effectively concedes there is not a single line of text in the Code or the FDCPA that expressly precludes the claims at issue. Midland thus can prevail only by showing this is one of the "rare" occasions where one independent federal enactment precludes another. *Randolph* v. *IMBS, Inc.*, 368 F.3d 726, 730 (7th Cir. 2004). It most certainly is not.

First, as established above, a debt collector "can easily satisfy both mandates" (*Dep't of Trans.* v. *Pub. Citizen*, 541 U.S. 752, 767 (2004)), because the challenged conduct is forbidden under both schemes. Any debt collector who refuses to violate the Code will automatically comply with the FDCPA. There is no "positive[] repugnan[cy]" between these laws, and thus no preclusion.

Second, even if the Code somehow tolerated Defendants' conduct, there is still no "irreconcilable conflict": The claims-process is wholly permissive; no one is compelled to file a claim. Put another way: even if the Code permits Defendants' abusive conduct, it certainly does not *require* it. Thus, it cannot effect a repeal of the FDCPA by implication. There is no "irreconcilable conflict" when one scheme allows what the other forbids; one must *compel* what the other forbids. The standard is one of impossibility. *J.E.M.*, 534 U.S. at 142; *Randolph*, 368 F.3d at 730. Midland has not identified a single controlling case suggesting that a true "conflict" exists where one statute merely permits what another disallows. Mere tension may be relevant in a *preemption* analysis, but not a *preclusion* analysis. See *POM Wonderful LLC* v. *Coca-Cola Co.*, 134 S. Ct. 2228, 2236 (2014). Each law operates within its proper sphere to regulate its targeted behavior. See *POM Wonderful*, 134 S. Ct. at 2239-2240; *Conn. Nat'l Bank* v. *Germain*, 503 U.S. 249, 253 (1992).

"When two statutes complement each other, it would show disregard for the congressional design to hold that Congress nonetheless intended one federal statute to preclude the operation of the other." *POM Wonderful*, 134 S. Ct. at 2238. Midland's contrary view reflects a fundamental departure from well-settled doctrine.[42]

Midland hints that authorizing these FDCPA claims will flood courts with unnecessary litigation. Yet exactly the opposite is true: it is *debt collectors*, not debtors, who are creating needless work for innocent parties and busy courts. Once it is clear that courts will enforce the FDCPA as Congress intended, parties like Midland will have no choice but to respect the process and end their abusive tactics. The entire point of the FDCPA is to stop unfair practices before they begin. Without the FDCPA's deterrent, Midland has no reason to stop a practice that exacts significant costs without any redeeming benefit. These suits will deter that future misconduct, eliminating the need to expend *any* further effort grappling with baseless claims.

---

[42] Midland further relies on *Kokoszka* v. *Belford*, 417 U.S. 642 (1974), a case definitively rejected as irrelevant by multiple. As those circuits explained, this Court's statements were "at minimum dicta," and at most a "gloss" on a separate issue entirely. *Simon*, 732 F.3d at 278 (describing the "garnishment provisions" in *Kokoszka*). Under the FDCPA, the question is "how debt collectors interact with debtors," not "what assets are made available" in bankruptcy. *Randolph*, 368 F.3d at 731 (likewise distinguishing *Kokoszka*). The concerns animating the FDCPA apply with full force in this context.

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted.

EARL P. UNDERWOOD, JR.
KENNETH J. RIEMER
UNDERWOOD & RIEMER, P.C.
21 S Section Street
Fairhope, AL 36532

RADHA A. PATHAK
WHITTIER LAW SCHOOL
3333 Harbor Blvd.
Costa Mesa, CA 90026

MATTHEW A. SELIGMAN
88 Mount Vernon St., Ste. 50
Boston, MA 02108

PETER K. STRIS
BRENDAN S. MAHER
DANIEL L. GEYSER
Counsel of Record
DANA BERKOWITZ
DOUGLAS D. GEYSER
STRIS & MAHER LLP
725 S. Figueroa St., Ste. 1830
Los Angeles, CA 90017
(213) 995-6811
daniel.geyser@strismaher.com

DECEMBER 2016